◦ THE HON'BLE SRI JUSTICE BILAL NAZKI, THE ACTING CHIEF JUSTICE

-

AND

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THE HON'BLE DR.JUSTICE G. YETHIRAJULU

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+ WP.Nos. 19968 and 19969 OF 2004

% Dated 27.4.2005

Smt. Doddi Sharada …. Petitioner

(in WP 19668 of 2004)

Smt. Pathar Bai …Petitioner

(in WP No. 19669 of 2004)

Vs.

$ The Collector & Dist. Magistrate, Hyderabad district and others

….Respondents

! Counsel for petitioners: Mr. G. Sadanand and Mr. Satish Kumar Varma

^Counsel for Respondents: The Advocate General,

<GIST:

> HEAD NOTE:

? Cases referred

1. 2004 (10) SCALE 315;
2. AIR 1984 SC 211;
3. (2005) 2 Supreme Court Cases 673;
4. AIR 1976 SC 2547;
5. AIR 2004 SC 3566;
6. (2000) 4 SCC 262;

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTRY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI, THE ACTING CHIEF JUSTICE

and
THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

WRIT PETITION NO : 19668 of 2004

Between:

Smt.Doddi Sharada, W/o.Doddi Shankaraiah,
R/o.18-7-445/151, Lalithabagh, Gowlipura, Hyderabad.

..... PETITIONER

AND

1 The Collector and District Magistrate, Hyderabad District, Hyderabad.
2 The Superintendent of Prison, Central Prison, Chanchalguda, Hyderabad.
3 The Government of Andhra Pradesh, General Administration (Law and Order-II) Department represented by its Chief Secretary to Government, Secretariat, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue appropriate writ, order or direction more particularly one in the nature of a writ of Habeas Corpus directing the Respondents to produce Doddi Sekhar S/o. Doddi Shankaraiah now detained in the Central Prison, Chanchalguda and set him at liberty forthwith after declaring his detention as illegal arbitrary in the interest of Justice and pass.

Counsel for the Petitioner: MR.G.SADANAND

Counsel for the Respondents: THE ADVOCATE GENERAL

and

WRIT PETITION NO : 19669 of 2004

Between:

Smt. Pathar Bai W/o Late Sohan Lal, R/o 13-2-391/1, Raheempura Jahda, Puranapool Hyderabad

..... PETITIONER

AND

1 The Collector and District Magistrate, Hyderabad District, Hyderabad
2 The Superintendent of Prison, Central Prison, Chanchalguda, Hyderabad
3 The Government of Andhra PRadesh, General Administration (Law & Order-II) Department rep by Chief Secrtary to Governmetn, Secretariat, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate Writ, order or Direction more particularly one in the nature of a Writ of Habeas Corpus directing the Respondents to produce Chandrapal S/o Late

Sohanlal now detained in the Central Prison, Chanchalguda and set him at liberty forthwith after declaring his detention as illegal, arbitrary in the interest of justice

Counsel for the Petitioner: MR.SATISH KUMAR VARMA

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

HON'BLE Mr. JUSTICE BILAL NAZKI, ACTING CHIEF JUSTICE

AND

HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.NOs. 19668 and 19669 of 2004

COMMON ORDER: (Per Hon'ble Mr. Justice Bilal Nazki, HACJ)

These two writ petitions are disposed of by this common order.

Earlier these two writ petitions were referred to Full Bench on a question as to whether District Magistrate should know the constituents of liquor seized or it would be sufficient for him to arrive at a subjective satisfaction to detain a person if Public Analyst reported that sample was not fit for human consumption. This question has been decided and the writ petitions on this question have been dismissed, but since many other questions were raised by the petitioners to challenge the order of detention, for other questions these writ petitions have come before this Bench.

The detenus are detained by orders of detention passed by the District Magistrate under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act"). It appears that liquor was seized from the detenus on various occasions and various cases were registered against them. Grounds of detention have been communicated to them. In W.P.No. 19668 of 2004 instances of number of cases have

been given which were registered against the detenu with regard to sale and distribution of ID liquor and samples drawn were found by the Public Analyst to be unfit for human consumption. Grounds 1 to 14 relate to the period from 16.8.2001 to 30.7.2004. Ground No.3 relates to a case registered on 3.10.2001 and the ground No.4 relates to a case registered on 31.10.2002. That means there was a gap of almost a year between registration of these two cases. In addition to these grounds, the District Magistrate also stated in the grounds of detention,

> "Apart from the above cases filed by the Prohibition and Excise Officials, a Rowdy sheet was also opened in the P.S. Chatrinaka against you vide Rowdy Sheet No. 79 on 23.3.1999 by the police officials and the same is in force."

In second case being W.P.No. 19669 of 2004 the District Magistrate passed an order of detention after being satisfied that the detenu was a bootlegger. Grounds 1 to 11 relate to the period from 30.11.2002 to 11.6.2004.

Mr. C. Padmanabha Reddy, learned senior counsel appearing for the petitioners has submitted that in both the cases many grounds are stale, as in the first writ petition some of the grounds pertain to the years 2001, 2002 and 2003, whereas in another writ petition they pertain to the years 2002 and 2003 also, since the stale grounds have been taken into consideration and the grounds are not severable in terms of the Act, therefore the orders of detention should be quashed.

Learned counsel for the respondents submits that the staleness of the grounds would not be sufficient for quashing the order of detention in view of the latest judgment of the Supreme Court reported in *The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & others Vs. Sangala Kondamma* . This is a judgment by two Judges of the Supreme Court. In this case order of detention was passed on various grounds. Criminal cases referred to

in grounds of detention relate to period from 17.1.2000 to 25.10.2002. Order of detention had been passed on 15.1.2003. The High Court of A.P. quashed the order of detention and the matter was taken to the Supreme Court. The Supreme Court, while noticing the preamble, statements and objections of the Act that it aims to prevent a person from indulging in certain illegal activities, held that it was necessary that the detaining authority must be satisfied that the proposed detenu was likely to indulge in such illegal activities in future also in which he was indulging in past. The Supreme Court was further of the view that this was a satisfaction that could be reasonably arrived at by the detaining authority only by examining the material that was produced before it. In such a process the detaining authority may not always take into consideration a stray or solitary incident which may not give rise to a reasonable apprehension or satisfaction as to such future act of the proposed detenu. Then it held,

> "Therefore it is necessary for the authority proposing the detention of a person under the Act to produce such material which shows the continuous previous illegal activities of the proposed dtenue which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other. Thus if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside. In the instant case it is seen that between the period from 10.1.2001 and 25.10.2002 the detenue was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating two incidents of 17.1.2000 and 10.1.2001 as stale by taking them in isolation. In our opinion, the Court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenue continuing to indulge in the illegal activities which requires his preventive detention."

The learned senior counsel appearing for the petitioners submits that this judgment has not taken note of earlier judgments of the Supreme Court which are contrary to the principles of law laid down by this judgment. He submits that there are number of judgments contrary to the principles laid down in this judgment presumably because the earlier judgments were not brought to the notice of the Supreme Court, therefore the judgment should be treated as per incuriam. The learned senior counsel also submits that the Supreme Court has followed the principle of staleness of grounds when the grounds are not severable and there are judgments of the Supreme Court which are from larger Benches than the Bench which decided the latest case. The learned senior counsel submits that judgment of the Supreme Court reported in *Kamlakar Prasad Chaturvedi Vs. The State of M.P. and another* has been consistently followed. This is a judgment by 3-Judge Bench of the Supreme Court. In this case the learned Judges differed in their views. Majority view was taken by Varadarajan and O. Chinnappa Reddy, JJ and minority view by Desai J. It will be relevant to note down the facts leading to this judgment somewhat in detail. A writ petition was filed before the Supreme Court under Article 32 of the Constitution challenging an order of detention dt. 6.5.1983 passed under Section 3 (2) of the National Security Act, 1980. Grounds of detention mentioned in the order were subject matter of criminal complaints. The first case related to 20.3.1978, the second case related to 9.8.1980, third case related to 13.7.1983, 4th and 5th cases related to 1982 and other two cases related to offences committed in 1983. One of the contentions raised before the Supreme Court by the writ petitioner was that the grounds were not proximate to the order of detention, it was mentioned that particularly grounds 1 and 2 which relate to offences committed in 1978 and 1980 were two remote in point of time to the order of detention. This contention was dealt with in para-12 of the judgment which is reproduced below,

> “12. The first two incidents which are of 1978 and

1980 are mentioned as grounds of detention in the order dated 6-5-1983. There can be no doubt that these grounds especially ground No. 1 relating to an incident of 1978 are too remote and not proximate to the order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under Section 3 (2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to Section 5-A of the Conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-section (1) of Sec. 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of S. 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining. ground or grounds. Therefore in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under Section 3(2) of the Act if he had not taken into account the state and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law. Accordingly, we quash the order of detention and direct that the petitioner be set at liberty forthwith.”

In this judgment it can be noted that the Supreme Court took

note of detention laws which do not lay down that the grounds of detention are severable. There is a provision in Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, but the National Security Act, 1980 which was subject matter of the writ petition before the Supreme Court does not have a provision similar to Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, whereas the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 also does not have a provision which could be taken in aid to separate the grounds. So this judgment of the Supreme Court does not leave any room to doubt that the Supreme Court laid down that even if one of the grounds is remote, the detention order cannot be upheld. On the other hand, the reasons given in para-12 of the judgment by 2 Judges, which we have quoted hereinabove, are almost same to what were given as reasons by Desai, J in his minority view judgment. We are, therefore, reproducing the reasons given by Desai, J while disagreeing with the majority view of Justice Varadarajan and O. Chinnappa Reddy, JJ. After mentioning the facts which we have already quoted hereinabove, Desai, J said,

> "Therefore, when in 1983, an action was proposed to be taken under sub-sec. (2) of S. 3, the Detaining Authority examined the history of the criminal activity of the detenu and took into account a continuous course of conduct which may permit an inference that unless interdicted by a detention order, such activity cannot be put to an end the power under sub-sec. (2) of S. 3 is exercised. Obviously, if there is a big time lag between the last of the events leading to the detention order being made and the remote earlier event, the same cannot be treated as showing a continuity of criminal activity. But if events in close proximity with each other are taken into account for drawing a permissible inference that these are not stray or spasmodic events but disclose a continuous prejudicial activity, the reference to earlier events cannot be styled as stale or remote which would vitiate the order of detention." (emphasis supplied)

Again Desai, J. held,

> "Turning to the facts of this case, if each event is examined in close proximity with each other, the events of 1978 and 1980 referred to in grounds Nos. 1 and 2 cannot be rejected as a stray or not proximate to the making of the detention order. But they provide the genesis of the continuity of the prejudicial activity of the detenu and they appear to have been relied, upon for that limited purpose."

These observations of Desai, J. are similar to the observations made by the learned Judges in *The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & others Vs. Sangala Kondamma* (1st supra). Desai, J. while framing his opinion also relied on earlier judgments of the Supreme Court reported in *Gora s. State of West Bengal* (AIR 1975 SC 473), *Smt. Rekhaben Virendra Kapadia Vs. State of Gujarat* (AIR 1979 SC 456) and *Fitrat Raza Khan Vs. State of Uttar Pradesh* (AIR 1982 SC 146). So, as a matter of fact, when *Kamlakar Prasad*'s case was decided, the majority of the Judges did not agree with the theory that the proximity should be in between two grounds and the last of the grounds should be proximate to the order of detention. Therefore the judgment in *The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & others Vs. Sangala Kondamma* (1st supra) appears to be per incuriam.

Now the question is whether this Court should follow the earlier judgment of 3-Judge Bench of the Supreme Court or the latest judgment of 2-Judge Bench. The conflict between two judgments is manifest and has been pointed out by us hereinabove. The judgment of the Supreme Court reported in *Kamlakar Prasad Chaturvedi Vs. The State of M.P. and another* (2nd supra) was not brought to the notice of the Supreme Court when they decided the case in *The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh & others Vs. Sangala Kondamma* (1st supra). The learned senior counsel submits that it is settled law that when there are two

conflicting judgments of the Supreme Court, the High Court should follow the judgments of the Bench of larger strength. Various judgments have been cited. We think it will be suffice to refer to the latest judgment of the Supreme Court delivered by Constitution Bench reported in *Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another* because this judgment has taken note of the law laid down by the Supreme Court earlier and also laid down the methodology which the Supreme Court adopts where Judges hearing the maters find themselves in disagreement with earlier judgments. Material facts of the case would be relevant. In *Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay* (AIR 1962 SC 853) a five-Judge Bench of the Supreme Court ruled by a majority of 4:1 that the Bombay Prevention of Excommunication Act (Act 42 of 1949) was ultra vires the Constitution as it violated Article 26 (b) of the Constitution and was not saved by Article 25 (2). On 26.2.1986 a petition was filed before the Supreme Court seeking reconsideration and overruling of the decision of the Supreme Court in *Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay* (AIR 1962 SC 853). The matter was listed before a 2-Judge Bench of the Supreme Court on 25.6.1986 and on 18.3.1994 the 2-Judge Bench directed the matter to be listed before a 7-Judge Bench for hearing. On 20.7.1994 the matter came up before the 7-Judge Bench and it was adjourned to 26.7.1994. An I.A.No. 4 was filed seeking a direction that the matter be listed before a 2-Judge Bench. This application, in effect, made a prayer that the case should have been listed before a 2-Judge Bench or 3-Judge Bench which was a normal practice of the Supreme Court and in the application reliance was placed on a number of judgments of the Supreme Court which have been noted by the Supreme Court in para-2 of the judgment. Finally after considering the earlier judgments the Supreme Court summed up the legal position in the following terms,

1. The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

2. A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

3. The above rules are subject to two exceptions: (i) the above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such list. …….

We are not concerned in this case with the terms 2 and 3, but

the 1st term lays down that even the subsequent Benches of lesser or coequal strength are bound by the judgments of Benches of larger strength of the Supreme Court. Therefore it leaves no room for High Courts not to follow the judgments of Benches of larger strength and follow the subsequent Benches of lesser strength.

Coming to the judgments, which are directly on the point, reference can be made to a judgment of the Supreme Court reported i n *State of U.P. Vs. Ram Chandra Trivedi* . The Supreme Court considered the whole law which was available on the subject when the judgment was delivered and while analyzing those judgments in para-22 it laid down,

> "Thus on a conspectus of the decisions of this Court referred to above, it is obvious that there is no real conflict in their ratio decidendi and it is no longer open to any one to urge with any show of force that the constitutional position emerging from the decisions of this Court in regard to cases of the present nature is not clear. It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K. S. Subramanian (Civil Appeal No. 212 of 1975, decided on July, 30, 1976) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

Reference can also be made to a judgment of the Supreme Court reported in *Sakshi vs. Union of India and others* . In para-23 the Supreme Court held,

> "23. Stare decisis is a well known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by Court of competent jurisdiction authorised to construe it, such declaration, in absence of palpable mistake or error, is

itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a Court of last resort should not be disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of law has become established by a series of decisions, it is binding on the Courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future."

Similarly reference may be made to another judgment of the Supreme Court reported in *Govt. of A.P. Vs. B. Satyanarayana Rao* . In para-8 the Supreme Court held,

"Learned counsel for the respondent attempted to convince us that the decision in the case of *State of A.P. Vs. Sadanandam* (1989 Supp (1) SCC 574) has to be ignored on the principle of per incuriam as certain relevant provisions of the Rules were not considered in the said case, and in any case this case requires to be referred to a larger Bench of three Judges. The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. This is not the case here. In State of A.P. Vs. V. Sadanandam the controversy was exactly the same as it is here and this Court after considering para 5 of the Presidential Order of 1975 held that the Government has power to fill a vacancy in a zone by transfer. We, therefore find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law. We, therefore, reject the arguments of learned counsel for the respondents."

For the reasons given hereinabove, we find that the grounds 1 and 2 in W.P.No. 19669 of 2004 are too remote in point of time to the

order of detention and in W.P.No. 19668 of 2004 grounds 3 and 4 are too remote in between themselves, ground No.3 refers to a case dt. 3.10.2001 and ground No.4 refers to a case dt. 31.10.2002.

Both the writ petitions are allowed, the orders of detention are quashed. The detenus are directed to be set at liberty, if not needed in any other case. No costs.

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BN J.

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GYR J.

Dt.27.4.2005

NB:

Advance order be sent.

LR Copies to be marked.

/BO/

KR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

1. **One Fair copy to the Hon'ble Mr. Justice Bilal Nazki (for his Lordship's kind perusal)**

2. **One Fair copy to the Hon'ble Dr. Justice G. Yethirajulu (for his Lordship's kind perusal)**

To

1. **The Collector and District Magistrate, Hyderabad District, Hyderabad.**
2. **The Superintendent of Prison, Central Prison, Chanchalguda, Hyderabad.**
3. **The Government of Andhra Pradesh, General Administration (Law and Order-II) Department represented by its Chief Secretary to Government, Secretariat, Hyderabad.**
4. 2 CCs to Advocate General, High Court Buildings, Hyderabad.
5. (8) L.R. Copies.
6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
7. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.
8. 2 CD copies

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice, on this Wednesday, the Twenty Seventh Day of April, Two Thousand and Five.